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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 JOHN HUTCHENS, ZAMORA MOTON,)
and BABY S.A., by John F. Hutchens, next)
12 friend,)

13 Plaintiffs,)

14 v.)

15 ALAMEDA COUNTY MEDICAL CENTER,)
and DOES 1-20,)

16 Defendants.)
17)
18)

Case No.: 07 CV 5600 SBA
Related case: 06 CV 06870 SBA

**[AMENDED PROPOSED] ORDER
GRANTING MOTION TO DISMISS
AMENDED COMPLAINT**

Date: Tuesday, April 29, 2008
Time: 1:00 p.m.
Dept. Courtroom 3, 3rd Floor

Complaint filed: November 2, 2007

19 **I. BACKGROUND**

20 Defendant ALAMEDA COUNTY MEDICAL CENTER ("ACMC") moves to dismiss all
21 causes of action in plaintiffs JOHN HUTCHENS, ZAMORA MOTON, and BABY S.A.'s
22 ("Plaintiffs") Amended Complaint for Damages and Injunctive Relief (hereafter "Amended
23 Complaint"). Plaintiffs' Amended Complaint asserts that ACMC violated Plaintiffs' civil rights
24 and committed other state law injuries based on a protective "hold" that was placed on their then-
25 newborn child by an Alameda County social worker, Rudolpho Hernandez. Plaintiffs have
26 previously filed another lawsuit, which has been related to this one: *Hutchens, et al. v. Alameda*
27 *County, et al.*, case no. 06-CV-06870 ("Related Action"). On the request of ACMC, judicial
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1 notice is taken of the allegations in the complaints filed in the Related Case, as well as of the prior
2 complaint in this case. Based on the allegations in the Amended Complaint and in the other
3 Complaints filed in the Related Action, the following facts emerge.

4 Plaintiff Moton went to ACMC for the birth of her son, BABY S.A. He was born on
5 November 4, 2005, a Friday. The day before she arrived at ACMC to give birth, Ms. Moton had
6 been given cough syrup containing codeine by ACMC personnel. Sometime after she arrived at
7 ACMC to give birth, her blood was tested for opiates, an act which she asserts was done without
8 her consent. That test came back positive, and the Alameda County Department of Social Services
9 was called. Plaintiffs have previously alleged that ACMC was required by law to contact social
10 services once they received a positive test result. Social services then put a hold on BABY S.A.

11 Prior to the arrival of social services, however, it was determined that the cough syrup was
12 the source of the positive test. ACMC personnel so informed Mr. Hernandez, the Alameda County
13 social worker who responded to the call, when he arrived at ACMC. He was satisfied with the
14 explanation, and that test result formed no basis for the events that followed.

15 Mr. Hernandez thereafter did an investigation of Plaintiffs and of the home BABY S.A.
16 was to go to after release from the hospital. Based on this investigation, he instituted a temporary
17 "hold" on BABY S.A.

18 Pursuant to that hold, ACMC personnel restricted Plaintiffs' access to their newborn, in
19 that they allowed them to have only supervised visits with their child. Plaintiffs admit that they
20 were not denied all access to their child.

21 Plaintiffs attempted to contact Mr. Hernandez over the weekend while the hold was in
22 place, apparently in an attempt to get it lifted. They were unable to reach him.

23 The following Monday, a hearing was held at the Alameda County Department of Social
24 Services. ACMC personnel were not present nor did they participate in this hearing. At the
25 hearing, it was decided that the hold should be lifted. ACMC was informed that the hold had been
26 lifted, and BABY S.A. was released into his parents' care.

1 Plaintiffs thereafter presented a claim to the County of Alameda pursuant to the California
2 Tort Claims Act, Government Code section 900, et seq. They apparently did not present such a
3 claim to ACMC. Instead they assert that presentment of the claim to the County of Alameda
4 should operate as a presentment of such a claim to ACMC under an estoppel theory. They claim
5 that the two public entities are intertwined and hold themselves out as indistinguishable public
6 entities, such that presentment of a claim to one operates as presentment of a claim to the other.

7 Plaintiffs originally filed suit in the Related Action against the County of Alameda and Mr.
8 Hernandez. However Plaintiffs did not name ACMC. Plaintiffs attempted in the Related Action
9 to get the Court to deem ACMC a department or agency of the County of Alameda, such that
10 service on the County of Alameda would operate as service on ACMC. Instead, the Court ordered
11 Plaintiffs to add in any and all defendants to the Related Action by October 3, 2007. Plaintiffs did
12 not do so. Instead, on November 2, 2007, Plaintiffs filed the instant suit.

13 Plaintiffs assert five "counts" against ACMC: a federal claim for violation of 42 U.S.C.
14 section 1983 (count one), and four state law claims -- a claim for violation of California Civil code
15 section 52.1 (count two), a claim for battery (count three), a claim for intentional infliction of
16 emotional distress (count four) and a claim for negligence (count five).

17 ACMC asserts that Plaintiffs have failed to state a claim under 42 U.S.C. section 1983. As
18 to the state law claims, ACMC asserts they are barred by Plaintiffs' failure to comply with the Tort
19 Claims Act, and are barred by various state law immunities. ACMC also asserts that the Civil
20 Code section 52.1 claim is insufficiently pleaded.

21 II. LEGAL STANDARD

22 For the purposes of a motion to dismiss, a court must take all the factual allegations in the
23 complaint as true. However the court is not bound to accept as true a legal conclusion couched as
24 a factual allegation. *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (on a motion to dismiss, courts
25 "are not bound to accept as true a legal conclusion couched as a factual allegation").

26 III. ANALYSIS

27 A. Section 1983 Claim

1 Plaintiffs claim that APMC violated their constitutional rights by (1) testing Plaintiff
 2 Moton's and BABY S.A.'s blood without consent or reasonable suspicion and (2) cooperating in
 3 the hold imposed by Mr. Hernandez. Neither claim is supported by the law. A public entity such
 4 as APMC cannot be sued under section 1983 except for an alleged policy, pattern, or practice that
 5 violates a person's constitutional rights. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978).
 6 It bears no vicarious liability for the acts or omissions of, for example, its employees. "[T]o
 7 prevail on their § 1983 claims, plaintiffs must have sufficiently alleged that: (1) they were deprived
 8 of their constitutional rights by defendants and their employees acting under color of state law; (2)
 9 that the defendants have customs or policies which "amount[] to deliberate indifference" to their
 10 constitutional rights; and (3) that these policies are the "'moving force behind the constitutional
 11 violation.'"" *Lee v. City of Los Angeles*, 250 F.3d 668, 681-682 (9th Cir. 2001). "The causation
 12 requirement of section 1983 is not satisfied by a showing of mere causation in fact. *See W.*
 13 *Prosser, Law of Torts* § 41 at 238-39 (4th ed. 1971). Rather, the plaintiff must establish proximate
 14 or legal causation." *Arnold v. Internat'l Business Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir.
 15 1981). Defendant's acts must be the proximate cause of the injury. *Ibid.*

16 As to the second hold, Plaintiffs assert that APMC has a policy, pattern or practice of
 17 seizing or detaining children, and that such practice constitutes a violation of their constitutional
 18 rights. However, Plaintiffs admit that the hold was imposed by Mr. Hernandez, who is an
 19 employee of the County of Alameda. APMC and the County of Alameda are separate public
 20 entities. Cal. Health & Safety Code § 101850, subd. (j), Alameda County Ordinance 0-98-56.
 21 Thus even assuming *arguendo* that Mr. Hernandez's decisions could constitute "policy" of any
 22 public entity, a point we do not decide here, his decision to impose the hold does not, and cannot,
 23 reflect the policy, pattern or practice of APMC.

24 APMC's actions were only to observe the hold that Mr. Hernandez imposed. APMC's
 25 actions taken pursuant to that hold appear reasonably tailored to meet the requirements of that
 26 temporary hold. Plaintiffs were not denied all access to their newborn. Rather, they were allowed
 27 access under supervision. Given the hold that was in place, these actions do not themselves
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1 support any constitutional liability on the part of APMC. They certainly do not reflect any
2 deliberate indifference to Plaintiffs' constitutional rights to familial association. APMC's actions
3 were not the moving force underlying the alleged constitutional violation, which is clearly the hold
4 itself. Plaintiffs' section 1983 claim against APMC arising out of the second hold

5 As for the testing of Plaintiff Moton's blood and that of her child without consent, this
6 allegation was newly added by the Amended Complaint. Plaintiffs contend that the testing of
7 Plaintiff Moton reflects a "pattern and practice" of conducting "surreptitious non-consensual
8 screenings for illicit drugs without probable cause or reasonable suspicion."

9 The United States Supreme Court upholds such testing against a Fourth Amendment
10 challenge "when 'special needs' other than the normal need for law enforcement provide sufficient
11 justification." *Ferguson v. City of Charleston*, 532 U.S. 67, 74 n.7 (2001) (hereafter *Ferguson*).
12 APMC asserts that the testing done here was done in the context of providing Plaintiff Moton and
13 her child with medical care in connection with the birth of BABY S.A. APMC asserts that such
14 testing is justified by the special need of ensuring a medically safe birth. APMC further asserts
15 there is no allegation that the testing was done for an improper purpose, such as for law
16 enforcement purposes.

17 We agree. While the Supreme Court disapproved of drug screening on pregnant mothers
18 where such testing was done for law enforcement purposes, the Court has repeatedly supported
19 such testing where other legitimate needs justified such testing. The Court has upheld
20 suspicionless, warrantless drug testing of, for example, high school students (*Vernonia School*
21 *District 47J v. Acton*, 515 U.S. 646 (1995)) and customs officials (*National Treasury Employees*
22 *Union v. Von Raab*, 489 U.S. 656 (1988)), because the special needs advanced by such testing
23 supported these searches. Similarly, the Ninth Circuit has upheld suspicionless, warrantless
24 searches of individual homes of government benefits recipients, again under a special needs
25 analysis. *Sanchez v. County of San Diego*, 464 F.3d 916 (9th Cir. 2006).

26 Here, the testing was done in the context of providing medical care to Plaintiff Moton and
27 her child. Drawing and testing the blood of an expectant mother is relevant to providing her with
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1 medical care. The presence of drugs (legal and otherwise) in the mother's system adversely affects
2 the health of mother and child. This is not a hypothetical danger, but a concrete one. *Cf. Chandler*
3 *v. Miller*, 520 U.S. 305, 318-319 (U.S. 1997). Knowledge of the presence of any such drugs is
4 medically relevant to providing care for both mother and baby during birth. Even had the testing
5 been done solely to ascertain whether mother and baby were at risk for child abuse or neglect, a
6 proposition nowhere supported by the Amended Complaint, the United States Supreme Court has
7 implicitly recognized that prevention of child abuse and neglect is a legitimate "special need" for
8 such testing, provided such testing is not for law enforcement purposes. *Ferguson, supra*, 532
9 U.S. 67, 79-80.

10 This is not a case where toxicology screening was done for the purpose of assisting law
11 enforcement. *Cf. Ferguson, supra*, 532 U.S. 67, 80-81 ("physicians . . . , in the course of
12 ordinary medical procedures aimed at helping the patient herself, come across information that
13 under rules of law or ethics is subject to reporting requirements, which no one has challenged
14 here."). There is no allegation that ACMC tested Plaintiff Moton to obtain criminal evidence, nor
15 that it disclosed to law enforcement the results of the test. Plaintiffs also could not reasonably so
16 allege. Cal. Penal Code § 11165.13.

17 Practical, less intrusive alternatives are few. *See, e.g., Sanchez v. County of San Diego*,
18 *supra*, 464 F.3d 916, 827-28. One can readily imagine the birth occurring well before a warrant
19 can be obtained. In the particular case of illegal drugs, a mother will not often admit to using
20 drugs. And yet it is a fact well-known in the community that illegal drugs in the mother's system
21 present serious health risks to both mother and child. Advance knowledge of such drug use can be
22 critical to ensuring a safe and healthy birth.

23 The testing here does not reflect deliberate indifference to Plaintiffs' rights. ACMC had a
24 special need to screen Ms. Moton's blood, and also a legitimate need to screen it for drugs, legal or
25 otherwise. There is no allegations to support any inference that ACMC engaged in such testing for
26 law enforcement purposes. ACMC was obliged by California law to report any positive tests for
27 controlled substances. Cal. Penal Code § 11165.13; Cal. Health & Saf. Code § 123605.

1 Moreover, once the test result was explained, ACMC personnel acted immediately to explain the
2 result to Mr. Hernandez after he arrived at ACMC. Plaintiffs admit that this test result played no
3 role in the hold that was later instituted. The facts as alleged show that ACMC's testing of Ms.
4 Moton's blood for illicit drugs was done pursuant a special need to provide Ms. Moton and her
5 child with medical care in the context of the birth of BABY S.A. This allegation cannot support a
6 section 1983 violation against ACMC.

7 For the foregoing reasons, Plaintiffs section 1983 claims are dismissed.

8 **B. State Law Claims**

9 Plaintiffs' state law claims are all barred by Plaintiffs' failure to follow the requirements of
10 the California Tort Claims Act. Cal. Gov. Code §§ 905, 905.2, 911.2, 945.4; *Dixon v. City of*
11 *Turlock*, 219 Cal. App. 3d 907, 913 (Cal. Ct. App. 1990). Plaintiffs allegations make clear that
12 they submitted a claim to the County of Alameda but not to ACMC. Plaintiffs' assert that
13 submission of a claim to the County of Alameda should suffice to submit a claim to ACMC.

14 As previously set forth, California law has declared that ACMC and the County of
15 Alameda are separate public entities. California law any government claim to a public entity be
16 submitted to the governing board. Cal. Gov. Code § 915; *Munoz v. State of California*, 33
17 Cal.App.4th 1767, 1776 (Cal. Ct. App. 1995). The Court takes judicial notice of the fact that
18 ACMC and the County of Alameda are governed by two separate and distinct boards. California
19 case authority holds that presentment of a claim to one public entity does not operate as
20 presentment of a claim to another. *See, e.g. Santee v. Santa Clara County Office of Educ.*, 220
21 Cal.App.3d 702, 713-714 (Cal. Ct. App. 1990). Plaintiffs claim that ACMC and the County of
22 Alameda "holds themselves out" to the public as a single public entity, and that the activities of
23 each are "so intertwined that the conduct of each should be imputed to the other." This is,
24 however, a legal conclusion, belied by California law, by the County's Ordinance No. 0-98-56 and
25 by other facts of which this Court can take judicial notice.

1 Because Plaintiffs have failed to comply with the California Tort Claims Act, all of their
2 state law claims are barred.¹ Therefore, ACMC's motion to dismiss as to these claims is granted.

3 **IV. CONCLUSION**

4 The Court having considered the moving papers submitted by ACMC, all opposition
5 thereto, and good cause appearing, IT IS HEREBY ORDERED:

6 Defendant's Motion to Dismiss the Amended Complaint is GRANTED as to all causes of
7 action alleged therein without leave to amend.

8 IT IS SO ORDERED.

9 DATED: _____
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11 By: _____
12 SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

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27 ¹ Because all state law claims have been dismissed for failure to comply with the California Tort Claims Act, the Court
28 does not address ACMC's arguments regarding state law immunities and the sufficiency of the allegations in support
of the Civil Code section 52.1 claim.